IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

OP.No. 23939 of 1999(Y)

PETITIONER:

P.RAMA VARMA RAJA, RETD. PRINCIPAL, N.S.S. POLY TECHNIC, PANDALAM, RESIDING AT JYOTHIS,MAVELIKKARA ROAD, PANDALAM.

BY ADV. SRI.KRB.KAIMAL
SRI.PAUL C. JOHN

RESPONDENTS:

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1. STTE OF KERALA, REP. BY THE SECRETARY TO GOVERNMENT OF KERALA, HIGHER EDUCATION DEPARTMENT, SECRETARIAT, TRIVANDRUM.

2. THE DIRECTOR OF TECHNICAL EDUCATION, TRIVANDRUM.

3. ACCOUNTANT GENERAL, A&E, TRIVANDRUM

BY ADV. SRI.JOSEPH MARKOSE
SRI.THOMAS VELLAPPALLY
GOVERNMENT PLEADER SRI. NOBLE MATHEW

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 17-1-2007, THE COURT, ON 31/01/2007, DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF ORDER DT. 17-3-1997.

EXT.P2 REPRESENTATION DT. 14-5-1998.

EXT.P3 LETTER DT. 30-7-1999.

EXT.P4 ORDER DT. 5-5-1995.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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O.P. No. 23939 of 1999

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Dated this, the 31st January, 2007.

J U D G M E N T

This matter relates to revision of pay of the petitioner as per pay revision orders. The petitioner started service as a Lecturer in N.S.S. Polytechnic, Pandalam in August,1965. Although the promotion posts for Lecturers were, first Head of Section and then Principal, prior to 1983 pay revision, the scale of pay of Head of Section was the same as that of Lecturer with a special pay of Rs. 75/- p.m. By the pay revision order of 1978, the Government introduced higher grade for employees on completion of 13 years' service in the entry grade. The petitioner having completed 13 years in the post of Lecturer, was eligible for that higher grade. Normally that higher grade should have been that of Head of Section. Since Head of Section did not have a separate scale of pay than that of Lecturer and the next higher scale of pay was that of the Principal, the petitioner was granted the scale of pay of Principal of Polytechnic as the 13 year higher grade. While the petitioner was thus continuing in the higher grade scale of pay applicable to Principal, he was promoted as Head of Section in 1981. Naturally, since the Head of Section did not have a higher scale of pay, the petitioner continued in the scale of pay applicable to Principal pursuant to the 13 year higher grade granted to him earlier. By the 1983 pay revision order, the Government introduced two higher grades, first one on completion of 10 years' of service and the second one on completion of 20 years of service. But, the 2nd higher grade was not made applicable to lecturers because of the prescription of minimum scale of pay for becoming eligible for second higher grade. Government also prescribed a scale of pay for Head of Sections by the pay revision order in 1983 which was a scale of pay in between the scale of pay of Lecturers and Principals. But, since the petitioner had already been placed in the scale of pay of

Principal, by virtue of the 13 year higher grade granted in 1979, the prescription of the new scale of pay for Head of Section was not made applicable to the petitioner although he was working as Head of Sections. Again in 1988, there came a pay revision with effect from 1-7-1988 in which also the Government retained two higher grades on completion of 10 years and 20 years which covered Lecturers also. These scales of pay were Rs. 1830-3425 and Rs. 2070-3550. The revised scale of pay of Principal fixed as per the pay revision order was Rs.2470-3675. Since the petitioner was already in the scale of pay applicable to the Principal, his scale of pay was revised as Rs.2470-3675. Therefore, the petitioner was not placed in the second higher grade as per the pay revision order. While so, he was promoted as Principal in the year 1994. By that promotion, he was not given any higher scale of pay because he was already in the scale of pay applicable to Principals. The petitioner repeatedly requested for placement in the scale next above that of Rs. 2470-3675 as the second higher grade, namely, Rs. 2640-3815, which was granted to him by Ext. P1, with effect from 1-7-1988. By the 1992 pay revision order, the scale of pay corresponding to the pre-revised scale of pay of Rs. 2470-3675 was fixed as Rs. 3000-5000 and the revised scale of pay corresponding to the pre-revised scale of pay of Rs. 2640-3815 was Rs. 3900-5075. However, from 1-3-1992, the petitioner was put in the scale of pay of Rs. 3000-5000 only, which is only the revised scale of pay corresponding to the scale of Rs. 2470-3675. Since, according to the petitioner, in view of the fact that by Ext. P1 order, he was put in the scale of pay of Rs. 2640-3815 with effect from 1-7-1988, the petitioner was entitled to the corresponding revised scale of pay of Rs. 3900-5075, which was the revised scale corresponding to the scale of Rs. 2640-3815 with effect from 1-3-1992 and also corresponding revision of scale of pay by the 1997 pay revision

effective from 1-3-1997. In reply to the petitioner's representation Ext. P2 in this regard, requesting for such corresponding revised scale of pay, by Ext. P3, the 1st respondent rejected the claim of the petitioner. According to the petitioner, this decision was on the basis of an erroneous assumption that the petitioner had been granted the scale of pay of Rs.3900-5075 whereas the petitioner was in fact given the scale of pay of only Rs. 3000-5000. Further, the petitioner contends that the effect of Ext. P3 is in fact to reduce the scale of pay of the petitioner from Rs. 3000-5000, which he was granted, to Rs. 2650-4200. The petitioner also points out that by Ext. P4, a similarly placed Principal, namely, Mr. P. Balan was placed in the scale of pay of Rs. 2640-3815 with effect from 1-7-1988 as per Ext. P4 dated 5-5-1995 and his pay was re-fixed on pay revision, in the scale of pay of Rs. 3900-5075. The petitioner submits that he is also entitled to similar fixation of pay in the revised scale. Since, in the meanwhile, the petitioner retired from service on 31-3-1997, the petitioner seeks the following reliefs:

> "i) Issue a writ of certiorari quashing/setting aside Ext. P3 Order;
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> ii) issue a writ of mandamus to the respondents to place the petitioner in the scales of pay of Rs.3900-5075 with effect from 1-3-1992 and Rs. 12600-15600 with effect from 1-3-1997 and to sanction and disburse arrears of salary and re-fixation of pensionary benefits based on the revised pay;
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> iii) issue a writ of mandamus to the respondents to disburse the arrears of salary and arrears of pensionary benefits with interest at 18% p.a. From the date on which they became due, till the date of disbursement."

2. The contention of the State against the claims of the petitioner as contained in the counter affidavit is that as per G.O(P) No. 930/93 (2) Fin. Dated 8-12-1993, persons enjoying time bound higher grade in various posts in accordance with the pre-revision pattern will be given only the specified grades of pay indicated in the

table attached to para 3(2) (i) and (ii) of the said Government Order. Respondents also contends that the case of Mr. P. Balan is not comparable to that of the petitioner because Mr. P. Balan was a directly recruited Principal whereas the petitioner became Principal by promotion.

3. On a consideration of the rival contentions, I am of opinion that the petitioner's contention should be accepted and the contention of the respondents should be rejected for the simple reason that the Government Order relied on by the respondents cannot have any application to the petitioner's case, since, by Ext. P1, he has already been sanctioned 20 years' higher grade scale of pay of Rs. 2640-3815. Respondents have no contention that that granting of higher grade and fixation of pay resulting therefrom is in any way erroneous nor have they any case that Ext. P1 has been cancelled. In so far as Ext. P1 stands, the petitioner is entitled to get his pay of Rs. 2640-3815 granted as per Ext. P1 revised to the scales of pay corresponding that scale of pay granted as per 1992 and 1997 pay revisions.

4. The contention that the case of Mr. P. Balan is not comparable to that of the petitioner since he was a directly recruited principal also does not appear to be correct. This is evident from Ext. P4 , which is not disputed by the respondents and is on the following terms:

> "Prior to 1983 pay revision the scale of pay of Head of Section and that Lecturer in Engineering is identical with the exception of Rs. 75/- as Special pay attached to the post of Head of Section. It is seen that he has not enjoyed fixation benefit on promotion to the post of Head of Section. As per table II of G.O(P) 480/89/Fin. Dated 1-11-89 the incumbents whose entry grade in the scale of pay of Rs.1590-3050 (scale of pay of Lecturer) are eligible for first higher grade in the scale of pay of Rs.1830-3425 and the second in the scale of pay of Rs.2070-3050. Sri. Balan who has enjoyed promotion as Principal in the scale of pay of Rs.2470-3675 may be allowed 2nd higher grade in the scale of pay of Rs.2640-3815 ie; the next higher scale in the list of standard scales of pay w.e.f. 1-7-

88. The service book of the incumbent is returned herewith."

(Emphasis supplied)

A reading of the above quoted Ext. P4 would make it abundantly clear that the said Balan was also a Lecturer who became Head of Section and Principal by promotion just like the petitioner. That being so, the case of Mr. P. Balan is exactly identical to that of the petitioner and the respondents cannot be heard to contend otherwise. Needless to say, the petitioner would automatically become entitled to the very same benefit Mr. P. Balan got.

In view of my above findings, there is no doubt whatsoever that the petitioner is entitled to the reliefs 1 and 2 as prayed for in the original petition. Accordingly, Ext. P3 is quashed and the respondents are directed to place the petitioner in the scale of pay of Rs. 3900-5075 with effect from 1-3-1992 and in the scale of pay of Rs.12600-15600 with effect from 1-3-1997. The petitioner would be entitled to arrears of salary and re-fixation of pensionary benefits on that basis. The re-fixation of pay in the above scales of pay and the re-computation of the monetary benefits applicable consequent on the above direction shall be completed and arrears of pay and arrears of retirement benefits shall be paid to the petitioner within a period of two months from the date of receipt of a copy of this judgment. Regarding the claim for interest, I leave it open to the petitioner to agitate the same in appropriate proceedings. The original petition is allowed as above, but without any order as to costs.

Sd/- S. Siri Jagan, Judge.

Tds/